

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SMITH,

Plaintiff,

-against-

EILEEN GONZALEZ-RUSSELL, et al.,

Defendants.

22-CV-7384 (AS)

ORDER

ARUN SUBRAMANIAN, United States District Judge:

The Court has received plaintiff's motion to add a party (really a motion to amend the complaint), defendants' response, and plaintiff's reply. Dkts. 53, 54, 56, 59. There's no question that plaintiff missed the deadline for adding parties. Dkt. 44. But the Court finds that there is good cause for the delay. Plaintiff says that he was unable to understand Dr. McGurty's involvement in the allegedly unconstitutional genital examination until certain key documents and depositions were taken in August and October of 2023. Plaintiff moved to amend less than three weeks after the last of the relevant depositions. "[C]ourts in this District have found that a time period of less than three months satisfies the diligence standard under Rule 16." *City of Almaty, Kazakhstan v. Ablyazov*, 2019 WL 2324587, at *2 (S.D.N.Y. May 29, 2019). All this being said, discovery is closed, and absent Dr. McGurty seeking to take discovery (and open himself up to discovery), no further discovery in this case will be taken.

As to relation back, this is plaintiff's response to a limitations defense that he anticipates Dr. McGurty raising. But Dr. McGurty isn't here. When he arrives, Dr. McGurty may assert any defense that is available to him. The Court intends to address these defenses in connection with the summary judgment motion that defendants anticipate filing. The Court and parties can discuss a schedule for that at next week's conference. But a caveat. The parties should be prepared to

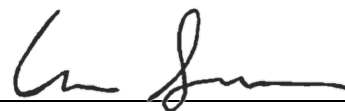
walk through the arguments on relation back at the conference, so that if and when Dr. McGurty enters these proceedings and raises the limitations defense, further argument will not be required.

Plaintiff should file the amended complaint and serve the amended complaint and this Order on proposed defendant McGurty by **February 12, 2024**. Counsel for Dr. McGurty may attend the post-discovery conference on **February 14, 2024**, at 2:00 PM in Courtroom 15A of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY 10007.

The Clerk of Court is directed to terminate Dkt. 53.

SO ORDERED.

Dated: February 9, 2024
New York, New York

A handwritten signature in black ink, appearing to read 'Arun Subramanian', is written over a horizontal line.

ARUN SUBRAMANIAN
United States District Judge